

## THE PROBLEM OF “COMPETING PASTS” IN TRANSITIONAL JUSTICE

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**Abstract:** While significant scholarly attention has been devoted to transitional justice programs that rectify the wrongs of one single past, to date scholars have generally ignored that most countries must reckon with multiple pasts, each characterized by different crimes perpetrated by different torturers against different sets of victims. These multiple and layered pasts – which compete with each other for the attention of governments, civil society groups and international actors – allow political actors to manipulate the transitional justice agenda for their own purposes. I argue that more research is needed to fully understand the selective reckoning with competing pasts.

**Keywords:** competing pasts, government policies, reckon with the past, transition, transitional justice

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**Rezumat:** În vreme ce programelor de justiție de tranziție care corectează greșelile unui trecut unic le-a fost dedicată o preocupare științifică semnificativă, cercetătorii de până acum au ignorat în general faptul că cele mai multe state se confruntă cu mai multe trecuturi, fiecare caracterizat de diferite crime, săvârșite de diferiți tortionari, împotriva unor tipuri diferite de victime. Aceste trecuturi diferite și stratificate – care concurează între ele pentru atenția guvernelor, a societății civile și a actorilor internaționali – permit actorilor politici să manipuleze agenda justiției de tranziție în funcție de propriile scopuri. Prezentul studiu argumentează că este nevoie de mai multe cercetări pentru a înțelege sub toate perspectivele, raportarea selectivă la trecuturile concurente.

**Cuvinte cheie:** justiție de tranziție, politici guvernamentale, reevaluarea trecutului, tranziție, trecuturi concurente

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## I. Introduction

Since World War II, an increasing number of new democracies have implemented a vast array of programs, methods and practices in an effort to reckon with the human rights violations perpetrated during past conflicts or by past authoritarian regimes. These measures, which address the legacies of past war crimes, crimes against humanity, genocide, civil and political rights violations, persecution and discrimination, are known as transitional justice.<sup>1</sup> They are “transitional” because they are enacted after the country undergoes a regime change from dictatorship to democracy and are meant to be used temporarily to redress past crimes in order to advance democratization. Trials against perpetrators of human rights abuses; amnesties; truth, history and inquiry commissions; rehabilitation of former political prisoners; restitution of abusively confiscated property; compensation packages; access by ordinary citizens to the secret files compiled on them by the state security; purges, vetting and lustration (that is, the marginalization of former perpetrators from top posts in public and private sectors); reforms of the police, secret police and armed forces; demilitarization and rehabilitation of former combatants; citizens’ opinion tribunals; official apologies and condemnations; unofficial truth projects; rewriting history textbooks; forensic investigations, inhumations and exhumations; memorialization, museums, exhibitions and art projects are all part of transitional justice.<sup>2</sup> These efforts are initiated/pursued by state officials, civil society groups, international organizations, or a combination of actors.

Of course, to a certain extent, “transitional justice” remains a misnomer since the term applies not only to cases of countries undergoing political transition or

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<sup>1</sup> For example, Jon Elster, *Closing the Books. Transitional Justice in Historical Perspective* (New York: Cambridge University Press, 2004); Alex Boraine, “Transitional Justice: A Holistic Interpretation,” *Journal of International Affairs* 60, no. 1 (2006): 17-27; E.F. Dexler et al., *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence* (New Brunswick: Rutgers University Press, 2010); Pablo De Greiff, “Theorizing Transitional Justice,” *Nomos* 51 (2012): 31-77; E. A. Posner and A. Vermeule, “Transitional Justice as Ordinary Justice,” *Harvard Law Review* 117, no. 3 (2004): 761-825; and above all Ruti Teitel, *Transitional Justice* (New York: Oxford University Press, 2001).

<sup>2</sup> Olivera Simic, ed., *An Introduction to Transitional Justice* (London: Routledge 2017); Lavinia Stan and Nadya Nedelsky, *Encyclopedia of Transitional Justice (1<sup>st</sup> edition)* (New York: Cambridge University Press, 2013); Marc Freeman, *Truth Commissions and Procedural Fairness* (New York: Cambridge University Press, 2006); and Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (London: Routledge, 2001).

to methods that are seeking to deliver justice. Canada, Australia, New Zealand and other consolidated liberal democracies have pursued reckoning programs after undergoing a change in mentality, not a political change from dictatorship to democracy. For example, the Canadian Truth and Reconciliation Commission was created once a critical mass of Canadians found the legacies of the Indian Residential School system simply unacceptable. Although accounting for a tiny fraction of all cases relevant for transitional justice, these democratic cases do represent important instances of redress. Similarly, the numerous reckoning programs, methods and practices that are considered part of transitional justice can have justice, but also truth, reconciliation, institutional rebuilding and non-repetition of past mistakes as their final goal. As such, despite its name, “transitional justice” extends beyond transitional periods and justice goals.

While extensive research has focused on transitional justice programs that rectify one single recent past, the literature is mostly silent on the fact that some countries must reckon with many pasts. As this short article suggests, understanding the interaction between programs rectifying different pasts opens up new research venues.

## **II. Transitional Justice: The State of the Field**

Domestic and international actors hold a strong normative presumption that crimes committed in the past must be acknowledged and addressed in order to build a solid social and political foundation for the future.<sup>3</sup> International institutions such as the United Nations, the Council of Europe, the European Court of Human Rights, and the International Criminal Court, international non-governmental organizations such as the African Union and the International Center for Transitional Justice, as well as civil society groups such as the Madres de Plaza de Mayo in Argentina, Memorialul Sighet in Romania or Memorial Society in the former Soviet Union regularly demand government accountability and redress for past atrocities. A state’s access to economic aid, membership in international institutions, and development support is often tied

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<sup>3</sup> Elster, *Closing the Books*, Teitel, *Transitional Justice*, as well as Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, D.C.: United States Institute of Peace, 1995).

to its willingness to address some, or all, of these human and political rights abuses.

Numerous empirical cases drawn from all continents and all post-World War II decades have been examined by transitional justice scholars from a political, historical, legal, sociological, and interdisciplinary perspective.<sup>4</sup> The most ambitious project to date, *Encyclopedia of Transitional Justice*,<sup>5</sup> documents reckoning efforts in almost 300 entries written by more than 180 contributors and details country studies, institutions, methods, debates, as well as key terms and concepts. In-depth case studies as well as catalogues of relevant laws, institutions and initiatives have identified not only the similarities among transitional justice programs implemented in various regions in response to different repression patterns (such as truth commissions or court trials in Latin America, Africa and East Asia), but also the limitations of specific practices that worked well in some settings but have proven to be unsuited in others (for example, the so-called gacaca courts in Rwanda).

In addition, these examples have helped us to answer important theoretical questions relevant across multiple cases, settings and time periods. We know that the nature of the dictatorial past, the type of regime change, and post-dictatorial politics determine which countries adopt specific reckoning methods.<sup>6</sup> That the political will and electoral calculations of post-dictatorial

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<sup>4</sup> See, among others, Hakeem Yusuf and Robert Cryer, eds., *Transitional Justice: Theory, Mechanisms and Debates* (London: Routledge, 2019); Cynthia Horne and Lavinia Stan, eds., *Transitional Justice and the Former Soviet Union: Reviewing the Past, Looking Toward the Future* (New York: Cambridge University Press, 2018); Cynthia Lawther et al., eds., *Research Handbook on Transitional Justice* (Chentelham, UK: Edward Elgar, 2017); Simic, ed., *An Introduction to Transitional Justice*; Lavinia Stan and Nadya Nedelsky, *Post-Communist Transitional Justice: Lessons from Twenty-Five Years of Experience* (New York: Cambridge University Press, 2015); Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W.W. Norton Sikkink, 2011); Lavinia Stan, ed., *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past* (London: Routledge, 2008); Kritz, ed., *Transitional Justice*.

<sup>5</sup> Stan and Nedelsky, *Encyclopedia of Transitional Justice*. An expanded second edition is already in production as we speak.

<sup>6</sup> For example, Horne and Stan, eds., *Transitional Justice and the Former Soviet Union*; Monika Nalepa, *Skeletons in the Closet: Transitional Justice in Post-Communist Europe* (New York: Cambridge University Press, 2010); Stan, ed., *Transitional Justice in Eastern Europe and the Former Soviet Union*; Katy Crossley-Frolick, “The Devil Is in the Details: The Vetting of East German Police in Post-Unified Germany” (Paper presented at the Midwest Political Science Association meeting, 2006); Nadya Nedelsky, “Divergent Responses to a Common Past: Transitional Justice in the Czech Republic and Slovakia,” *Theory and Society* 33, no. 1 (2004): 65-115; Helga Welsh, “Dealing with the Communist Past: Central and East European Experiences after 1990,” *Europe-Asia Studies* 48, no. 3 (1996): 413-428; John P. Moran, “The Communist Torturers of Eastern Europe: Prosecute and Punish or Forgive and Forget?,” *Communist and Post-Communist Studies* 27, no. 1

governments, as well as the so-called political entrepreneurs (individuals who champion reckoning programs) shape the scope of transitional justice programs.<sup>7</sup> That transitional justice affects respect for human rights, rule of law, trust in government, the consolidation of peace and the quality of democracy.<sup>8</sup> That the timing of these reckoning programs matters,<sup>9</sup> since some programs are implemented soon after the regime change, while others are enacted years (sometimes even decades) after the end of dictatorship. That transitional justice is linked to democratization, development, gender, corruption, crime and identity.<sup>10</sup> That countries learn from each other’s transitional justice experience through open or subtle diffusion fueled by both state and non-state interventions.<sup>11</sup> That local initiatives are sometimes more effective in delivering truth, justice, and reconciliation than national or international programs.<sup>12</sup> And that civil society and non-state actors – groups as much as isolated individuals – can play an important role in initiating, formulating and implementing reckoning programs when state actors are incapable or unwilling to do so.<sup>13</sup>

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(1994): 95-109; Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Nelson: University of Oklahoma Press, 1991).

<sup>7</sup> Brian Grodsky, *The Costs of Justice: How New Leaders Respond to Previous Human Rights Abuses* (Notre Dame: University of Notre Dame Press, 2010).

<sup>8</sup> Tricia Olsen et al., “The Justice Balance: When Transitional Justice Improves Human Rights and Democracy,” *Human Rights Quarterly* 32, no. 4 (2010): 980-1007; Cynthia Horne, *Building Trust and Democracy: Transitional Justice in Post-Communist Countries* (New York: Oxford University Press, 2017); as well as Eva-Clarita Pettai and Vello Pettai, *Transitional and Retrospective Justice in the Baltic States* (New York: Cambridge University Press, 2014).

<sup>9</sup> Horne, *Building Trust and Democracy*.

<sup>10</sup> Guillermo Trejo et al., “Breaking State Impunity in Post-Authoritarian Regimes,” *Journal of Peace Research* 55, no. 6 (2018): 787-809; Paige Arthur, *Identities in Transition: Challenges for Transitional Justice in Divided Societies* (New York: Cambridge University Press, 2014); Susanne Buckley-Zistel and Ruth Stanley, eds., *Gender in Transitional Justice* (London: Palgrave, 2011); Tricia Olsen et al., *Transitional Justice in Balance: Comparing Processes, Weighting Efficacy* (Washington, DC: United States Institute of Peace Press, 2010); as well as Pablo De Greiff and Roger Duthie, eds., *Transitional Justice and Development: Making Connections* (New York: Social Science Research Council, 2009).

<sup>11</sup> Helga Welsh “Beyond the National: Pathways of Diffusion,” in *Post-Communist Transitional Justice*, eds. Stan and Nedelsky, 168-187

<sup>12</sup> L. Waldorf, “Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice,” *Temple Law Review* 79, no. 1 (2006): 1-40, and R. Shaw et al., *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford: Stanford University Press, 2010).

<sup>13</sup> For example, Peter Rush and Olivera Simic, eds., *The Arts of Transitional Justice* (London: Springer, 2014); Patricia Lundy and Mark McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” *Journal of Law and Society* 35, no. 2 (2008): 265-292; Louis Bickford, “Unofficial Truth Projects,” *Human Rights Quarterly* 29, no. 4 (2007): 994-1035; David Backer, “Civil Society and Transitional Justice: Possibilities, Patterns and Prospects,” *Journal of Human Rights* 2, no. 3 (2003): 297-313; and Lavinia Stan, “Vigilante Justice in Post-Communist Europe,” *Communist and Post-Communist Studies* 44, no. 4 (2011): 319-327.

These studies have added valuable empirical and theoretical insight, but also focused primarily on one single past (such as a dictatorship, civil war, genocide, or massacre) perpetrated by a specific government during a distinct time period with roughly the same repression methods. In this context, researchers have investigated whether state, non-state, or international actors choose to ignore or deal with that past, which reckoning methods they opt for, when and for how long after the regime change is transitional justice enacted, and for which final goals are these efforts initiated, enacted and brought to completion.

However, many new democracies must reckon with multiple pasts, and the assumption that their governments redress the most proximate past (the one which ended with the transition from dictatorship to democracy or from conflict to peace) is not always borne out in reality. Some of these pasts are more distant in time than others, but all of them are considered “recent” since some or many of their victims and perpetrators are still alive and their legacies continue to affect the country politically, socially, economically, and even culturally and morally. These pasts can be different or similar in terms of the nature of state-led repression, the levels of resistance and collaboration of the society with the regime, the categories of victims and victimizers, or the number of crimes and human rights abuses perpetrated. As these pasts often compete for the attention of government and civil society actors and, in addition, have cumulative effects on democratization projects, they are best understood as “competing and layered pasts.”

### **III. Competing and Layered Pasts – Some Examples**

It is my contention that we need to investigate further the ways in which modern regimes treat these layered pasts and respond to calls for reckoning from competing sectors of society. Let us detail two types of pasts that some post-conflict and post-dictatorial countries address concomitantly.

First, after decades of state-led repression and abuse, some countries have multiple *different* pasts that require the attention of their governments. Think of Romania in 1989, when the communist dictatorship of strongman Nicolae Ceaușescu collapsed as a result of a bloody revolution. Once the dictator was ousted, the successive post-communist governments had to contend with three – not just one – recent pasts. The legacies of all those pasts were likely to affect the new post-communist democracy, since their rights abuses had never been

adequately addressed before December 1989, and these three pasts differed in the nature and scope of their rights violations. The most immediate past was the brief but violent 1989 Revolution, during which 1,100 persons died and 3,300 were wounded by police and armed forces in street confrontations.<sup>14</sup> The communist regime of 1945-1989 was the second past that claimed the attention of the new leaders since none of the crimes that regime perpetrated had been redressed and the surviving victims still called for recognition and justice.<sup>15</sup> Third, the pro-Nazi rule of Marshall Ion Antonescu and the Iron Guard (1940-1944) constituted yet another gruesome past characterized by a distinct set of state-led crimes that affected another set of victims who, in turn, demanded justice.<sup>16</sup>

Post-communist Romania was not the only country where several pasts, different in their repression type, competed for the attention of government actors seeking to implement transitional justice and were layered, in the sense that they succeeded one another but their effects were cumulative by the time governments sought to rectify their legacies. Brutal communist and Nazi regimes that perpetrated human rights abuses had affected not only the Baltic republics of Estonia, Latvia and Lithuania, but also Hungary, Czechoslovakia and Croatia, compelling their post-communist governments to decide whether and how to reckon with the legacies of both these types of dictatorships.<sup>17</sup> Even in unified Germany, the communist human rights abuses had to be redressed simultaneously with the much older crimes of the Third Reich which affected a distinct group of victims.<sup>18</sup> By the late 1990s, the former Yugoslav states faced

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<sup>14</sup> Raluca Grosescu and Raluca Ursachi, *Justiția penală de tranziție. De la Nürnberg la postcomunismul românesc* (Iași: Polirom, 2009), and Peter Siani-Davis, *The Romanian Revolution of December 1989* (Ithaca: Cornell University Press, 2007).

<sup>15</sup> Vladimir Tismăneanu, Dorin Dobrințu et al., eds., *Raport Final. Comisia Prezidențială pentru Analiza Dictaturii Comuniste din România* (București: Humanitas, 2007), and Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (New York: Cambridge University Press, 2013).

<sup>16</sup> Truvia Frilling et al., eds., *Raport Final. Comisia Internațională pentru Studierea Holocaustului în România* (Iași: Polirom, 2005).

<sup>17</sup> Pettai and Pettai, *Transitional and Retrospective Justice in the Baltic States*; Márton Dunai, “Pain Still Acute as Hungary’s Jews Mark Liberation of Budapest Ghetto,” *Reuters*, January 17, 2020, accessed on 8 February 2021, <https://www.reuters.com/article/us-holocaust-memorial-budapest-liberation-idUSKBN1ZG1DX>; Iavor Rangelov, “Contesting Atrocity and Identity: The War Crimes Debate and Transitional Justice in Croatia”, in *Nationalism and the Rule of Law: Lessons from the Balkans and Beyond*, ed. Iavor Rangelov (Cambridge: Cambridge University Press, 2014), 135-163, and Timothy Snyder, *Bloodlands. Europe between Hitler and Stalin* (New York: Basic Books, 2010).

<sup>18</sup> James A. McAdams, *Judging the Past in Unified Germany* (New York: Cambridge University Press, 2001).

the need to redress the crimes of their Nazi and communist regimes, as well as those associated with the bloody wars that had torn the federation apart earlier during that decade, which had added an additional layer of trauma and loss.<sup>19</sup> Similarly, the pre-1991 Soviet regime competed with some sort of post-1991 civil war or bloody conflict for the attention of transitional justice practitioners and decision-makers in the republics of Moldova, Armenia, Azerbaijan, and Georgia.<sup>20</sup> One should not forget the much older, historical genocide, which Armenians endured at the hands of the Ottoman authorities at the beginning of the 20<sup>th</sup> century and for which they asked restitution and redress ever since.

Second, competing pasts can also be *similar* in nature. For example, in Romania some of the post-1989 calls for reckoning with communist violations tended to refer to that recent past as one single time block stretching from the end of World War II in 1945 to the collapse of the Ceaușescu regime in 1989. Nevertheless, state officials and scholars alike increasingly recognized that the dictatorships of Gheorghe Gheorghiu-Dej (1947-1965) and Ceaușescu (1965-1989) were similar in their ideological foundations, state structure and state-society relations, but quite different in the type of repression, nature of human rights abuses, and number of victims. The “deep repression” of Gheorghiu-Dej’s early communism, which resulted in egregious crimes such as murders, imprisonment, or deportations, contrasted with the “wide repression” of Ceaușescu’s late communism, during which the regime preferred to engage in mass surveillance instead of mass arrests.<sup>21</sup>

As in Romania, the Polish communist regime was not equally repressive at all times during 1945-1989, as periods of extreme brutality (such as the early Stalinist regime or the massacre at the Wujek mines in 1981) alternated with periods of mass surveillance but relatively few murders (as was the case under the martial law).<sup>22</sup> Examples can be drawn from other regions of the world as well. For instance, after World War II, South Korea was ruled by several successive military dictatorships that were ideologically and institutionally similar

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<sup>19</sup> Grodsky, *The Costs of Justice*, and Jelena Subotic, *Hijacked Justice: Dealing with the Past in the Balkans* (Ithaca: Cornell University Press, 2009).

<sup>20</sup> Robert Austin, “Confronting the Soviet and Post-Soviet Past in Georgia”, in *Transitional Justice and the Former Soviet Union: Reviewing the Past, Looking Forward to the Future*, eds. Cynthia Horne and Lavinia Stan (New York: Cambridge University Press, 2018), 243-262, and Robert Austin, “Transitional Justice as Electoral Politics”, in *Post-Communist Transitional Justice: Lessons from 25 Years of Experience*, eds. Lavinia Stan and Nadya Nedelsky (New York: Cambridge University Press, 2014), 30-50.

<sup>21</sup> I borrow the terms of “deep” and “wide” repression from Tina Rosenberg, *The Haunted Land: Facing Europe’s Ghosts after Communism* (New York: Random House, 1996).

<sup>22</sup> Nalepa, *Skeletons in the Closet*.



but were dominated by different leaders who inflicted different levels of repression by relying on slightly different state agencies.<sup>23</sup> Examples can be found on the African continent as well. After the Arab Spring uprisings, Tunisia had to investigate the abuses perpetrated under both Habib Bourguiba (who acted as prime minister and president during 1956-1987) and Zine El Abidine Ben Ali (who assumed power in a bloodless coup in 1987 and ruled the country with an iron fist until 2011). Both regimes relied on the Constitutional Democratic Rally to maintain their grip on power and to control the people but at the same time they inflicted different levels of abuse.

The examples mentioned above suggest that some governments decided that the pasts to be reckoned with were represented by specific incidents, events, and personal rules, but it is evident that such a decision disregarded other events and time periods that were part of the same or of a different dictatorial regime. In some cases, governments recognized several pasts that differed significantly in the intensity of repression and the number of abuses, but not so much in ideological and institutional terms. In other cases, governments selected pasts that diverged, and even contrasted, in terms of their ideological premises. Which pasts are recognized, and which ones are selected for redress, makes a difference in transitional justice terms, as I argue in the next section.

#### **IV. Redressing the Legacies of Competing Past**

According to preliminary research, when competing for the attention of governments these layered pasts create challenges in the design and execution of transitional justice programs, possibly undermining state (re)building, societal reconciliation, political and social trust building, and democratization. For example, a cursory look at the legislation adopted after Ceaușescu's removal reveals that Romania's post-communist governments first offered justice to victims of the 1989 Revolution, then to those of the communist regime, and

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<sup>23</sup> The South Korean case has been thoroughly documented in Hun Joon Kim, "Trial and Error in Transitional Justice: Learning from South Korea's Truth Commissions," *Buff. Human Rights Law Review* 19, no. 125 (2013): 125-167; Hun Joon Kim, "Local, National and International Determinants of Truth Commission: The South Korean Experience," *Human Rights Quarterly* 34, no. 3 (2012): 726-750; Hun Joon Kim, "Transitional Justice in South Korea," in *Transitional Justice in the Asia-Pacific*, eds. Renee Jeffery and Hun Joon Kim (New York: Cambridge University Press, 2013), 229-258; Hun Joon Kim, *The Massacres at Mt. Halla: Sixty Years of Truth Seeking in South Korea* (Ithaca: Cornell University Press, 2014). See also R. Jeffery and Hun Joon Kim, *Transitional Justice in the Asia Pacific* (New York: Cambridge University Press, 2013).

only later (at the insistence of international actors) to those of the pro-Nazi Antonescu regime. Court cases, compensation packages, and memorialization initiatives first benefited the 1989 revolutionaries, although they were far fewer in numbers than the victims of either communist or fascist regimes. Even Ceaușescu’s trial focused on the crimes of the short-lived Revolution more than those perpetrated under the much lengthier communist rule.

A similar trend – domestic attention to the communist regime, domestic neglect of the Nazi occupation, and international actors’ insistence to redress the latter – was evident in the post-Soviet Baltic states, which at the insistence of the foreign community eventually expanded the mandate of their presidential commissions to encompass investigation of both Soviet and Nazi occupations. In the former Yugoslav republics, Armenia, Azerbaijan, and Georgia, the positive memories of communism, the trauma of the 1990s wars, coupled again with international pressure to stop post-communist conflicts and redress their legacies led to a transitional justice program that benefited the victims of the 1990s conflicts, but not those of communist times. And this was done despite the fact that communist-era victims far exceeded in numbers the victims of the 1990s confrontations.

Again, further examples can be drawn from other settings, suggesting that competing pasts allow governments to pick and choose which transitional justice program to pursue for which groups of former victims and against which categories of perpetrators. Let us look at Asia first. Rather than seeing the past as one single continuous military regime, the post-dictatorial South Korean governments set up a large number of different issue-specific truth commissions to reckon with various strong rulers and even different massacres (including, for example, the state-led repression perpetrated on Jeju Island during the 1948-1954 period). Truth commissions were not set up to address historical crimes in the order in which those crimes were perpetrated; neither did the commissions’ temporal jurisdictions seek to redress pasts that affected larger numbers of victims first. Similarly, Cambodia has opened trials against the perpetrators of the excesses of Pol Pot and his Khmer Rouges from decades ago, but not the more recent communist-era human rights abuses.<sup>24</sup>

This pattern is discernible on the African continent, as well. Take for instance post-Arab Spring Tunisia, where reckoning gave satisfaction to the victims of the Ben Ali regime, and punished its collaborators, but disregarded

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<sup>24</sup> Ellen Emilie Stensrud, “New Dilemmas in Transitional Justice: Lessons from the Mixed Courts in Sierra Leone and Cambodia,” *Journal of Peace Research* 46, no 1 (2009): 5-15.

Bourguiba's earlier crimes – and not necessarily because those crimes were fewer or far less egregious in nature.<sup>25</sup> Since the 1990s, five different pasts have been recognized in Kenya: the British colonial rule (which ended in 1963 when the country declared its independence), the one-party rule of Jomo Kenyatta (the country's first prime minister and then first president during 1963-1978), Daniel arap Moi's repression (which ended in 2002), the violence around the disputed 2007 presidential elections and the rule of Uhuru Kenyatta (starting in 2013).<sup>26</sup> Redressing the abuses of these periods has been a very selective and incomplete process that recognized some victims at the expense of others.

The same trend is visible in a country like Brazil, where besides a National Truth Commission created in 2011, more than 140 truth commissions were set up at the local and regional level in view of investigating limited time periods characterized by different levels of repression. The Rubens Paiva Truth Commission of the State of São Paulo, established by the Legislative Assembly of that state in February 2012 and named after a federal congressman killed by the dictatorship, was the first such subnational commission which successfully fulfilled its mandate by collecting almost one thousand testimonies from former victims. It can, thus, be said that the country's dictatorship has not been seen as one single state-led repressive wave but as hundreds of smaller regional campaigns which merit distinct investigations and redress efforts. In fact, Brazil's tendency to break up the past into numerous temporal and spatial segments has exhibited some curious similarities with South Korea, as recent research has suggested.<sup>27</sup>

All these examples suggest that more research is needed to elucidate the ways in which and the reasons why different transitional justice actors pursue reckoning when faced with multiple competing and layered pasts. Among the questions that could be considered are the following: Which pasts are most in need of reckoning at the start of a democratic transition? Which pasts are recognized by the society, the government, and the international actors as in need of immediate reckoning and which pasts are perceived with less exigency? Which pasts are ignored, rejected or downplayed and why? How do layered

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<sup>25</sup> Christopher Lamont and Hela Boujnef, "Transitional Justice in Tunisia: Negotiating Justice during Transition," *Politička misao* 49, no. 5 (2012): 32-49.

<sup>26</sup> Gabrielle Lynch, *Performance of Injustice: The Politics of Truth, Justice and Reconciliation in Kenya* (Cambridge: Cambridge University Press, 2018).

<sup>27</sup> See Cristina Buarque de Hollanda and Hun Joon Kim, "Commissionism," in *Encyclopedia of Transitional Justice*, eds. Lavinia Stan and Nadya Nedelsky (New York: Cambridge University Press, forthcoming).

crimes affect a country's transitional justice approach? Is there a temporal order in which certain pasts are redressed? Do the domestic political context of transition and the post-transition environment determine which pasts are addressed or silenced? Which criteria do government actors in new democracies use in selecting which pasts to redress first and how do international and domestic contexts shape those criteria? Do governments first rectify the most proximate past, which is closest to the time of regime change, or the most gruesome past, which resulted in the highest number of rights abuses? Are proximate and distant pasts redressed with the same transitional justice methods? Do governments forget pasts whose victims are no longer around or constitute a tiny minority? Does attention to transitional justice designed to address one past lead to neglect of another? Is justice delayed, justice denied?

Thus, further research should not only identify the main recent pasts (with their accompanying human rights abuses) that government actors in various post-dictatorial and post-conflict democracies have sought to rectify, but it should also identify the transitional justice measures and programs that sought to redress the legacies of these pasts (including trials, vetting/lustration, property restitution, compensation packages, rehabilitations, and memorialization). It should investigate the reasons why post-dictatorial governments have redressed some pasts, while ignoring or downplaying others, establish whether such selective reckoning has affected the credibility of transitional justice in the country, and distinguish the approaches to competing pasts undertaken by national governments from those championed by international actors. Moreover, further research should understand the benefits and costs incurred by governments that engage in such selective reckoning with the past, the extent to which this selectivity negatively affects the democratization project, and the policy implications of selective reckoning.

## **V. Conclusion**

It is already accepted that transitional justice is prone to becoming a tool in the hands of governments, civil society groups or international actors that seek to maximize their own goals rather than pursue redress for victims or avenues to stop impunity. This politicization has been amply documented in cases when countries reckon with one single past. Countries that face the need to reckon with multiple pasts offer increased possibilities for political manipulation of

transitional justice programs, since governments can prioritize these pasts according to their own calculations, interests, and goals. Indeed, even the cursory look at such cases presented above suggests that selecting some pasts over others reflects a strategic manipulation of history that can be used by state actors to mollify domestic interest groups, privilege certain political actors, discriminate against selected minority groups, rewrite national narratives, obtain recognition for selected suffering and victims, and assuage international calls for accountability or justice. It is time to turn to the systematic study of these cases to understand how deep politicization runs and how deleterious it can be to the process of democratization.

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